

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

April 29, 2014 at 2:00 p.m.

1.	12-24206 -C-13	DARREN/DANNA LADD	MOTION TO MODIFY PLAN
	WSS-5	W. Steven Shumway	3-5-14 [105]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 5, 2014. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee has filed opposition to confirmation of the proposed plan. The Chapter 13 Trustee objects to Debtors' motion on the following grounds:

1. According to the Trustee's calculations, the Plan will complete in more than the 60 months proposed, possibly taking 79 months. This exceeds the maximum amount of time under 11 U.S.C. § 1322(d). It appears that this is due to the proposed increase in the percentage to unsecured creditors from 0% to 100%.
2. Debtors' verification of the declaration fails to provide any qualification on stating that the information is true and correct, pursuant to 28 U.S.C. § 1746, but rather states that Joint Debtor

April 29, 2014 at 2:00 p.m.

Darren Ladd has personal knowledge of the facts contained in the declaration, and declares under the penalty of perjury under the laws of the United States of America, but does not state what they are declaring in that respect.

3. Debtors propose to reclassify the Sierra Central Credit Union from Class 2 to Class 3, where a portion is presently unsecured pursuant to court order. Debtors have not vacated the order, so that the creditor is entitled to an unsecured claim under 11 U.S.C. § 506(1). The claim of Sierra Central Credit Union was valued at \$10,500.00 per the September 7, 2012 Civil Minute Order, Dckt. No. 66, with the balance of the claim to be paid as a general unsecured claim. Creditor filed an amended claim on March 16, 2012, Court Claim No. 3, reflecting a secured claim in the amount of \$12,478.70.
4. Section 6 of Debtors' modified plan proposes a plan payment of \$10,000.00 through March 4, 2014 (month 24 where Debtors' petition was filed on March 2, 2012), then \$500.00 beginning on April 25, 2014 for 35 months. Through March 2014, Debtors have paid in a total of \$10,020.00. Trustee would have no objection if this were corrected in the order confirming.

Based on the foregoing, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

2. [13-25008-C-13](#) **TERENCE CAMPOLIETI**
[14-2008](#)
CAMPOLIETI, SR. V. PNC
MORTGAGE, INC. ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-8-14 [[1](#)]

Plaintiff: Terence Campolietti

Defendant: PNC Mortgage, Inc., individually and as agent for PNC Bank, N.A.;
PNC Bank, N.A., as successor in interest to National City Bank, Inc., and
National City Mortgage

Breach of contract and the implied covenant of good faith and fair dealing, declaratory judgment, injunctive relief, specific performance, unlawful & fraudulent business practices in violation of Business & Professions Code Section 17200.

Debtor-plaintiff owns real property at 6401 Rabbit Hollow Way, Elk Grove CA 95757. There is a first deed of trust held by National City Bank and National City Mortgage (plaintiff believes that now only the bank holds the first). A second deed of trust is held by Operating Engineers Federal Credit Union.

Plaintiff's chapter 13 plan was confirmed June 22, 2013. Plaintiff sought a loan modification and submitted the paperwork 8 times. The bank finally offered debtor a temporary loan modification. The debtor fulfilled the terms of the temporary loan and filed for a final loan modification. The debtor amended his plan, which was confirmed on December 10, 2013, to reclassify the mortgage from Class 1 to Class 4.

The modified plan specified that the plaintiff would file a motion for approval of the loan modification after the modification was signed by both the debtor and the bank. The plaintiff submitted the signed loan modification but the bank denied the modification because the court had not approved it and indicated a new application must be submitted.

Plaintiff seeks treble, compensatory, and consequential damages, costs & interest, preliminarily and permanently enjoin defendants from fraudulent acts, general damages of \$500,000, special damages of \$500,000, and exemplary damages of \$500,000.

No C/S. No answer. However, a Joint Status Conference Statement has been filed wherein defendant PNC states it has been served. The Statement was not signed by plaintiff. Additionally, defendant states this is not a core proceeding and goes on to discuss its "motion to dismiss." Defendant also states it will be filing a motion for summary judgment.

Motion to Dismiss Adversary Proceeding and Motion to Strike Portions of the Complaint filed on March 11, 2014.

3. [13-25008-C-13](#) **TERENCE CAMPOLIETI**
[14-2008](#) **AAB-1**
CAMPOLIETI, SR. V. PNC
MORTGAGE, INC. ET AL

MOTION TO DISMISS ADVERSARY
PROCEEDING
3-11-14 [8]

Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Not Provided. No Certificate of Service has been filed, reflecting that the parties in interest were served the Motion and the supporting pleadings of this Motion. The court cannot determine whether the present Motion was set for hearing on at least 28 days' notice, as required by Local Bankruptcy Rule 9014-1(f) (1), or on at least 14 day's notice but the less than 28 days' notice period required by Local Bankruptcy Rule 9014-1(f) (2). The Plaintiff having responded to this Motion (and not having raised a defect in service), the court will treat the Motion as an LBR 9014-1(f) (2) noticed Motion and issue a tentative ruling on the matter.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Defendant PNC BANK, N.A., dba PNC Mortgage (stating that it has been erroneously sued herein as PNC Mortgage, Inc., individually and as agent for PNC Bank., N.A.; PNC Bank., N.A) (hereinafter, "Defendant") moves the court for an order dismissing Debtor Terence Campolietti's ("Plaintiff/Debtor") adversary proceeding pursuant to Federal Rules of Civil Procedure Rule 12(b) (6). Defendant states that Plaintiff Debtor has failed to state a claim for relief against Defendant, and that the suit should be dismissed with prejudice, and that Defendant be awarded costs of suit and other such relief as this Court deems to be just and proper.

Defendant claims that the court should abstain from exercising jurisdiction over the exclusive state laws issues in this adversary proceeding. Bankruptcy courts may abstain from hearing disputes tangentially related to the bankruptcy case and "in the interest of comity with state courts or respect for state law." 28 U.S.C. § 1334(c); *In re: Tucson Estates, Inc.* (9th Cir. 1990), 912 F. 2d 1162, 1169, and that the August 2013 Chapter 13 Plan remains in effect.

Defendant cites to the case of *Stern v. Marshall*, where the U.S. Supreme Court held that certain core bankruptcy proceedings, expressly allowed by statute, could violate Article III of the U.S. Constitution when the issues involved are outside of the bankruptcy realm. *Stern v. Marshall*, 564 U.S. 2 (2011); *In re: Bellingham Insurance Agency, Inc.* (9th Cir. 2012) 702 F. 3d 553. In *Stern* and *Bellingham*, the issues involved in those cases were at least tangentially related to the pending bankruptcy. Defendant states that seeking an amended Chapter 13 Plan on a possible state law breach of contract is a type of claim the *Stern* and *Bellingham* decisions were designed to preclude. This is nothing more than forum shopping. For these reasons, the court should abstain for hearing the adversary proceeding.

Defendant states that the first cause of action for breach of contract fails to allege a contract existed between Defendant and Debtor. Defendant states that the first cause of action for breach of contract fails to allege a contract existed between Defendant and Debtor. Defendant argues that the Complaint admits that Defendant never signed the alleged October 2013 Agreement (Complaint, Paragraph 13). Even if the court finds that the agreement does exist, the material terms of the agreement are not alleged.

Debtor's second cause of action for breach of the implied covenant of good faith and fair dealing is based on the allegation that Defendant failed to execute an agreement it allegedly was required to execute (Complaint, ¶ 13). Defendant argues that the allegation is not sufficient to support a cause of action for breach of implied covenant of good faith and fair dealing as there is contractual basis for this claim. Defendant states that Debtor failed to establish an existing, underlying contract. Even if such an agreement was alleged, the material terms of the agreement are not. here is no tort basis for this claim. The breach of implied covenant of good faith and fair dealing has limited application and has not been applied outside the insurance context. *In Careau & Co. v. Security Pacific Business Credit, Inc.*, 222 Cal. App. 3d 1393, the appellate court recognized California courts have refused to extend the tort to noninsurance cases and concluded that, "[f]rom this history it seems clear to us that the recognition of a tort remedy for a breach of the implied covenant in a non insurance contract has little authority. Id. at 1398-1399.

Defendant asserts that the third claim for declaratory judgment/ injunctive relief/ specific performance "fails as a matter of law" because of the lack of controversy arising from the case. Debtor seeks a declaratory judgment that the October 2013 agreement exists (Complaint ~'16, 27), but makes no allegations that Defendant executed the agreement in question. Similarly, Defendant argues that the injunctive relief claim fails with the declaratory relief claim, and that a cause of action must exist before injunctive relief may be granted. *Shell Oil Co. v. Richter* (1942) 52 Cal. App. 2d 164, 168.

Defendant argues that the adversary does not allege the elements of specific performance, in that a complaint for specific performance must allege the following:

- (1) a specifically enforceable type of contract, sufficiently certain in its terms;
- (2) adequate consideration, and a just and reasonable contract;

(3) plaintiffs performance, tender or excuse for nonperformance;

(4) the defendant's breach;

(5) inadequacy of the remedy at law.

Witkin, California Procedure (5th Ed. 2008) Pleading, § 785. Here, the required specific performance elements are not alleged, and Defendant claims that the terms of the alleged October 2013 agreement are not pled. Without knowing the material terms, it cannot be determined whether there was adequate consideration, whether the contract was just and reasonable, whether Debtor performed or was excused from performing, or how PNC allegedly breached the agreement.

With respect to the fourth claim, Defendant claims that the Unlawful Business Practices Under the California Business and Professions Code §17200 ("§17200") has not been violated, as Debtor appears to be alleging that the failure to enter into a private contract with Plaintiff is an unlawful business practice. There are no laws forcing Defendant to enter into any binding contracts to modify deeds of trust for the benefit of other individuals. Defendant is not alleged to have violated any other applicable laws, whether federal or state. Accordingly, there is no basis to plead an "unlawful" business practice against PNC under §17200.

Lastly, Defendant claims that the fifth claim for Fraudulent Business Practices Under §17200 does not allege a fraud claim against Defendant, and that no members of the public are involved pursuant to the statute. Even if the public was involved, this cause of action has no facts as to how any members of the public are likely to be deceived.

RESPONSE BY PLAINTIFF DEBTOR

Plaintiff argues that this court is not required to abstain from jurisdiction because no state court lawsuit has commenced. As a core proceeding under 28 U.S.C §§ 157(a) and (b), this Court may exercise jurisdiction. The statutory scheme for abstaining from jurisdiction provides two areas for abstention -- those case where abstention is mandatory and those cases in which it is discretionary. Plaintiffs argue that section 1334 only mandates this court to abstain if a state court complaint has already commenced. 28 U.S.C. §1334(c)(2); see also *Renaissance Cosmetics Inc. v. Dev. Specialists Inc.*, 277 B.R. 5, 12 (S.D.N.Y. 2002)

Plaintiff asserts that because the outcome of the adversary proceeding will materially affect the feasibility of the plan, the court should assert jurisdiction. The 9th Circuit Court in *In re Tucson Estates Inc.*, 912 F.2d 1162, 1167 (9th Cir. 1990) has suggested 11 factors for this Court to consider in determining whether to abstain from asserting jurisdiction. The first consideration identified is: (1) the effect or lack thereof on the efficient administration of the estate if a court recommends abstention, *In re Tucson Estates Inc.*, 912 F.2d 1162, 1167 (9th Cir. 1990) (citing *In re Republic Reader's Serv. Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)).

The complaint at issue identifies that this Court, in confirming Debtor's Chapter 13 Plan, made specific orders as to the execution and finalization of any loan modification. As alleged, Defendants offered

Plaintiff a loan modification, which he timely executed and returned. The court's order confirming Debtor's Plan required each party to sign/execute the modification prior to seeking Court approval. Defendants never signed the loan modification documents. Defendants' execution of the loan modification documents was a prerequisite to seeking Court approval. Defendants then used Debtor's alleged failure to obtain Court approval of the modification as their justification for withdrawing the loan modification. However, it was impossible for Debtor to seek Court approval without Defendants' execution of the documents.

Plaintiff maintains that the Defendant cannot seize upon its own failure to comply with this Court's orders regarding the approval of the modification as justification for denying the loan modification. The outcome of this Adversary Proceeding will determine whether Plaintiff can keep his home and whether this Chapter 13 Plan can be completed. If Plaintiff prevails, then the subject property will remain as a Class 4 asset paid directly by Debtor. If Plaintiff does not prevail then the asset must be listed as a Class 1 debt and the arrears cured by the Chapter 13 Plan. Plaintiff will not be able to afford to keep this home if he must pay it as a Class 1 debt. The outcome of this lawsuit will literally make or break this Bankruptcy case.

Plaintiff further argue that jurisdiction should be asserted because the allegations hinge upon the Defendant's violation of a federal court order.

FEDERAL RULE OF BANKRUPTCY PROCEDURE 7007

Law and motion pleading practice in adversary proceedings is governed by Federal Rule of Civil Procedure 7(b). Fed. R. Bankr. P. 7007. A motion filed in an adversary proceeding, "must,"

- A. be in writing unless made during a hearing or trial;
- B. **state with particularity the grounds** for seeking the order; and
- C. state the relief sought.

Fed. R. Civ. P. 7(b).

In the present Motion, the following grounds are stated with particularity;

- A. The first cause of action for breach of contract fails to allege a contract existed between pnc and debtor;
- B. The breach of implied covenant of good faith and fair dealing fails for multiple reasons;
- C. The third claim for declaratory judgment/ injunctive relief / specific performance all fail as a matter of law, because a declaratory relief action should not require the court to render an advisory opinion and the injunctive relief claim fails with the declaratory relief claim;
- D. The adversary proceeding fails to allege the elements of specific performance;

- E. The fourth claim for unlawful business practices under California Business and Professions code §17200 ("§17200") is without merit; and
- F. The fifth claim for fraudulent business practices under §17200 has not been properly alleged.

Complaint, Dckt. 1. These grounds, stated with particularity, are what the Movant has based its request for relief - dismissal of the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Bankruptcy Procedure 7012. See *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982); *Martinez v. Trainor*, 556 F.2d 818, 819-820 (7th Cir. 1977).

Review of Allegations in the Complaint

Before ruling on the Motion the court must review the Complaint to determine what is alleged and whether the above stated grounds support a motion to dismiss for failure to state a claim. The Complaint, subject to the "short and plain statement showing that the pleader is entitled to the relief" required by Federal Rule of Civil Procedure 8(a) and Federal Rule of Bankruptcy Procedure 7008, as applied by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), alleges.

- A. This court has jurisdiction over this proceeding pursuant to 28 U.S.C. Section 157(b)(2) *et seq.*
- B. Defendant PNC Mortgage, Inc. is believed to be an agent of PNC Bank, N.A. as successor in interest to National City Bank, Inc. and National City Mortgage and that each Defendant operated on behalf of each other at all times relevant herein (unless otherwise specified, each Defendant shall be referred to collectively as "Bank").
- C. A Chapter 13 Plan confirmed in June, 2013 provided for the First Deed of Trust to be paid as a Class 1 claim with mortgage arrears to be paid through the Plan.
 - 1. At the time of confirmation of the Chapter 13 Plan, Debtor was actively seeking a loan modification from Bank. At that time, Debtor had already submitted the loan modification application 8 times.
 - 2. In June 2013, Bank offered to Debtor a temporary loan modification. As a result, Debtor filed a Modified Plan to reclassify the Mortgage as a Class 4 debt, pending final loan modification approval.
 - 3. There were no objections to confirmation of the Modified Plan by any creditor. The Modified Plan was confirmed by this Court on August 20, 2013.
- D. The confirmed First Modified Plan orders that upon final loan modification approval that:

Upon completion of a loan modification agreement, if any, the Debtor shall provide a copy of the agreement to the Chapter 13 Trustee and file a motion for approval of the loan modification within fourteen (14) days of the agreement being signed by the Debtor and Defendant. The Debtor shall commence making payments under the terms of the loan modification prior to, and subject to, approval by the Court. (First Modified Plan, Special Provisions section 6.05. Emphasis added.)

- E. Debtor completed his trial period payments in September 2013 and Bank provided final loan modification approval in October 2013. Debtor and his counsel waited for the Defendant to sign the Loan Modification documents in order to seek Court approval. Defendant never executed the Loan Modification documents. Instead, in early December 2013, Debtor received a notice from Defendant that his final loan modification was denied for his failure to obtain Court approval of the modification.
- F. Debtor maintains that this assertion is contrary to the Court's Order Confirming which provides that Defendant is to sign the documents before Court approval may be sought. Counsel for Debtor contacted Bank to attempt to resolve the matter. Defendant's representative stated that the matter had been closed and that the only way to obtain a loan modification was to submit a brand new application for a loan modification.
- G. Plaintiff's first cause of action is for a breach of contract. Plaintiff states that the parties entered into a contract wherein Defendants agreed to offer a permanent loan modification. Defendants failed to perform their obligations under the terms of the contract as stated in the preceding paragraphs.
- H. Plaintiff's second cause of action is for breach of contract and the implied covenant of good faith and fair dealing. Plaintiff states that every contract, including the mortgage contracts at issue herein, contains an implied covenant of good faith and fair dealing that requires Defendants to perform their obligations in good faith and to deal fairly with Plaintiff. 22. Defendants breached their duties of good faith and fair dealing by virtue of the acts complained of above.

- I. Plaintiff's third cause of action is for declaratory/ injunctive relief/ specific performance. Plaintiff does not have a plain, adequate, speedy, or complete remedy at law to address the wrongs alleged in this Complaint, and will suffer irreparable injury because of the Defendants' misconduct unless injunctive and declaratory relief is granted. By reason of the foregoing, Plaintiff states that he is entitled to declaratory and injunctive relief as set forth herein. Plaintiff seeks a declaratory judgment that a permanent loan modification is in place that burdens the Property and binds the parties thereto. Plaintiff seeks an Order providing for specific performance of the contract.
- J. Plaintiff alleges that Defendant is engaging in unfair business practices such as to justify the relief sought under the Unfair Competition Law ("UCL"), codified at Bus. & Prof. Code § 17200 et seq.
- K. Plaintiff alleges that Defendant has engaged in fraudulent business practices in violation of Section 17200 of the California Business and Professions Code, which provides that "unfair competition shall mean and include any...fraudulent business act or practice."

Complaint, Dckt. 1.

STANDARD

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that complaints contain a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. Fed. R. Civ. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.*, citing to 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235-36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action").

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether a motion to dismiss is to be granted should be resolved in favor of the pleader. *Pond v. General Electric Co.*, 256 F.2d 824, 826-27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Rule 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal*, 129 S.Ct 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. See *Bell Atl. Corp. v. Twombly*, 127 S.Ct.

1955, 1964-66 (2007). ("[A] plaintiff's obligation to provide 'grounds' of his 'entitle[ment]' to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.").

In ruling on a 12(b)(6) motion to dismiss, the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court required to "accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

DISCUSSION

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

First, the court considers the Plaintiff's contention that this court should abstain from exercising jurisdiction over the present proceeding. Federal Rule of Bankruptcy Procedure 7012(b) requires that the responsible pleading admit or deny that the allegation is a core or non-core proceeding. The basis for the court's jurisdiction over this matter is found in 28 U.S.C. § 1334, which provides, in relevant part

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11. 28 U.S.C. § 1334(b)."

[C]laims that arise under or in Title 11 are deemed to be 'core' proceedings, while claims that are related to Title 11 are 'noncore' proceedings." *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir.1995). Claims that arise under Title 11 are those that involve a cause of action created or determined by a statutory provision of Title 11. *Id.*, citing *In re Wood*, 825 F.2d 90, 96-97 (5th Cir. 1987). Claims that arise in Title 11 are " 'administrative' matters that arise solely In bankruptcy cases . . . [They] are not based on any right expressly created by Title 11, but nevertheless, would have no existence outside of the bankruptcy." *Wood*, 825 F.2d at 97.

Claims that are "related to" a case under title 11, are, generally speaking, those claims that are owned by the debtor at the time the petition

is filed and that become part of the estate pursuant to 11U.S.C. § 541(a). They may also include proceedings that take place between third parties. See 1 Lawrence P. King, et al., *Collier on Bankruptcy*, § 3.01[3][c] (15th Ed. rev. 2010). The Ninth Circuit has concluded that a "related" proceeding is largely synonymous with a "non-core" proceeding. See *Benedor Corporation v. Conejo Enterprises, Inc.* (*In re Conejo Enterprises, Inc.*), 71 F.3d 1460, 1464, n.3 (9th Cir.1995). A non-core proceeding "'does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy'" *In re Harris Pine Mills*, 44 F.3d at 1435 (quoting *Wood*, 825 F.2d at 96-97). A bankruptcy court has jurisdiction over a related proceeding.

Here, although Plaintiff Debtor's claims for relief all implicate questions of state contract, tort, and business law, the the matter invokes the substantive right created by federal bankruptcy law, for Debtors to seek the extraordinary relief and protections of a Chapter 13 bankruptcy, through drafting and confirming a Chapter 13 reorganization plan. Although the claim of jurisdiction over this matter as a "core proceeding" is poorly pled in the actual Complaint, the Plaintiff has appropriately stated in his responsive pleadings that this court retains jurisdiction over this proceeding, the result of which would have a critical effect on the estate being administered in bankruptcy.

In extending jurisdiction over this adversary case, however, the court notes that there are many issues and shortcomings that are apparent in Plaintiff's Complaint, Dckt. No. 1. Plaintiff's first cause of action, alleging breach of contract, does not specifically state what the subject contract is. Plaintiff does not file any exhibits in support of the Complaint, clearly identifying the contract that Defendant has purportedly breached. The "contract" at issue could consist of a variety of items, including the Debtor's Chapter 13 Plan, the promissory note or deed of trust securing the repayment of Defendant's home loan, or the loan modification that was apparently never executed. If the "contract" alleged is in fact, the loan modification offer, Plaintiff does not cite to any legal authority showing that an unrealized, unsigned instrument can serve as a basis upon which a breach of contract claim can arise.

Likewise, Plaintiff makes vague allegations regarding Defendant's breach of the "implied covenant and good faith and fair dealing," without including specific statements of law, or substantiating such allegations with facts and evidence in support of the Complaint. Plaintiff does not adequately assert how Defendant's specific actions violate the covenant of good faith and fair dealing, which has been recognized to be implicit in contracts by many courts. *Massey v. Tandy Corp.*, 987 F.2d 1307, 1309 (8th Cir. 1993); *McDonald's Corp. v. Barnes*, 5 F.3d 537 (9th Cir. 1993); *Healy v. Carlson Travel Network Associates, Inc.*, 227 F. Supp. 2d 1080 (D. Minn. 2002) (both Minnesota and Illinois recognize the covenant of good faith and fair dealing as implicit in every contract). See also *Subaru of America, Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212 (Tex. 2002) (noting that Texas declines to extend duty to act in good faith to all franchise agreements but Texas statute provides duty to act in good faith among parties to a car dealership franchise agreement); *Manufacturer Direct LLC v. DirectBuy, Inc.*, 2006 WL 2095247 (N.D. Ind. 2006) (noting that, unlike most other states, Indiana does not impute into every contract a duty of good faith and fair dealing; such a duty arises in limited circumstances only, such as when a fiduciary relationship exists).

Plaintiff's broad assertion that "Defendants breached their duties of good faith and fair dealing by virtue of the acts complained of" does not reference specific acts by Defendant, which has violated the covenant girding the unidentified contract.

Plaintiff's third cause of action is for declaratory/ injunctive relief/ specific performance. Plaintiff does not lay out the standard elements of specific performance, which typically requires the allegation of a valid and enforceable contract; a breach of that contract; the argument that legal damages are inadequate; the assertion that enforcement of the court's decree must be practical; and that no defenses apply. Plaintiff merely asserts that Plaintiff will suffer "irreparable injury" because of the Defendant's "misconduct," unless injunctive and declaratory relief are granted. This claim for relief is devoid of any application of the facts, simply concluding that Plaintiff is entitled to a "permanent loan modification...that burdens the Property and binds the parties thereto."

Again, in his fourth cause of action, Plaintiff makes conclusory legal statements Defendant is engaging in unfair business practices under Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 et seq., without delving in to the offending acts of Defendant in this case. Plaintiff merely asserts that,

By performing the acts described above, Defendants are engaging in unfair business practices such as to justify the relief sought under the UCL.

Similarly, Plaintiff alleges that Defendant has engaged in fraudulent business practices in violation of Section 17200 of the California Business and Professions Code, by making the bald legal assertion that "Defendants continue in their fraudulent business practices as described herein."

Lastly, it is not clear whether Plaintiff is requesting declaratory relief in interpreting the court's order that confirmed the first Modified Plan on August 20, 2013. The Plaintiff has not requested a declaratory judgment, in which a controversy concerning the interpretation of the judgment has arisen. The parties have not articulated desire for a determination of their respective rights and duties. The court already having ruled on this issue, the order confirming Plaintiff's Chapter 13 Plan remains undisturbed, and the court will not issue new orders "clarifying" this order which is already in effect, unless an actual controversy arising from this order in the context of Plaintiff's case is identified.

It is not the court's task to draft the Complaint for the Plaintiffs, and draw legal conclusions that are unsubstantiated by the facts of this case on behalf of the Plaintiff when no factual basis exists for the allegations advanced in the complaint. The Plaintiff has offered no set of facts in support of his claim which would entitle him to the relief, and has not appropriately pled the elements of Plaintiff's state causes of action and apply the law to the facts of this case. Without such factual allegations, the complaint does not satisfy the pleading requirements of Rule 8 or the plausibility requirements of Rule 12(b). Thus, this Motion is granted and the Debtors' adversary case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by Defendant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the Complaint is dismissed without prejudice.

IT IS FURTHER ORDERED that if Plaintiff desires to file an amended complaint in this Adversary Proceeding, shall file and serve on or before May 29, 2014 a motion for leave to file an amended complaint, with a copy of the proposed amended complaint filed as an exhibit in support of the motion. Though leave to file a first amended complaint is liberally granted, the court is requiring the motion and copy of proposed amended complaint filed as an exhibit by the Plaintiff to avoid merely a repeat filing of a motion to dismiss.

If no motion to file an amended complaint is timely filed, the Clerk of the Court shall close the file for this Adversary Proceeding.

4. [13-25008-C-13](#) TERENCE CAMPOLIETI
[14-2008](#) AAB-1
CAMPOLIETI, SR. V. PNC
MORTGAGE, INC. ET AL

MOTION TO STRIKE PORTIONS OF
PLAINTIFF'S COMPLAINT
3-11-14 [[11](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Not Provided. No Certificate of Service has been filed, reflecting that the parties in interest were served the Motion and the supporting pleadings of this Motion. The court cannot determine whether the present Motion was set for hearing on at least 28 days' notice, as required by Local Bankruptcy Rule 9014-1(f)(1), or on at least 14 day's notice but the less than 28 days' notice period required by Local Bankruptcy Rule 9014-1(f)(2). The Plaintiff having responded to this Motion (and not having raised a defect in service), the court will treat the Motion as an LBR 9014-1(f)(2) noticed Motion and issue a tentative ruling on the matter.

Tentative Ruling: The Motion to Strike Portions of the Complaint has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to continue the Motion to Strike Portions of the Complaint to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

REVIEW OF THE MOTION

Defendant PNC BANK, N.A., dba PNC Mortgage (stating that it has been erroneously sued herein as PNC Mortgage, Inc., individually and as agent for PNC Bank., N.A.; PNC Bank., N.A) (hereinafter, "Defendant") seeks an order striking portions of the Plaintiff Terence Campolieti's ("Plaintiff/Debtor") Complaint.

A party may move to strike any "insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." FR.C.P. Rule 12(f). A motion to strike avoids "the expenditure of time and money that will arise from litigating 'spurious issues' by eliminating those issues prior to trial." *Taylor v. Quail*, 471 F.Supp.2d 1053, 1058-1059 (C.D.CaL 2007). In considering a motion to strike, courts generally apply the same test used to determine a motion to dismiss under FRCP Rule 12(b)(6). *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), rev 'd on

other grounds, 510 U.S. 517, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994).

Defendant argues that the punitive and exemplary damages portions of the complaint should be stricken, because Plaintiff's prayer for said damages to not state how Defendant has acted with any malice or oppression against Plaintiff, and that Plaintiff has not submitted any particular facts supporting allegations of misconduct committed by Defendant. To support an award of punitive and/or exemplary damages, a defendant must act with "oppression, malice or fraud" and go well beyond the bounds of human decency and must be consider despicable. Civil Code §3294(a); *Silberg v. California Life Ins. Co.*, 11 Cal. 3d 452, 462 (1974).

Defendant also asserts that a corporate employer is not liable for punitive and/or exemplary damages unless the corporate employer has advance knowledge and consciously disregarded, authorized or ratified the act of oppression, fraud or malice on the part of an officer, director or managing agent of the corporation. Civil Code §3294(b). There are no allegations directed at an officer, director or managing agent of Defendant or that they engaged in any fraudulent conduct.

Additionally, the amount of punitive damages cannot stated in the complaint. Civil Code §3295(e). The complaint's prayer for relief requests punitive damages against Defendant in the amount of \$500,000.00, which Defendant argues is improper as a matter of law.

RESPONSE BY PLAINTIFF

Defendants "move to strike" Plaintiff's claim for punitive damages claim for lack of specificity, but seeks leave to amend to plead sufficient facts to assert a claim for punitive damages. Dckt. No. 16.

REPLY BY DEFENDANT

Defendant mischaracterizes Plaintiff's opposition as admitting that the complaint lacks facts to support a claim for punitive damages. Defendant argues that the complaint's allegation does not Plaintiff's contention that the Defendant violated any court order, and that Plaintiff has not provided no factual basis to demonstrate any agreement existed between the parties in the first place. Dckt. No. 13.

The court's decision is to continue the Motion to [date] and [time], when Plaintiff may have filed or served a Motion Requesting Leave to File and Amended Complaint, pursuant to the court's ruling on Defendant's Motion to Dismiss the Adversary Proceeding, AAB-1. The court is dismissing the adversary case, thereby rendering this Motion to Strike moot. Quite possibly, however, Defendant's objections to Plaintiff's request for punitive damages may remain unresolved in Plaintiff's proposed amended complaint. Rather than denying the present Motion, the court will continue the Motion to Strike Portion of Plaintiff's Complaint, in the event that Plaintiff's defects in pleading a claim for punitive damages are not corrected in Plaintiff's proposed amended complaint, if such a complaint will be submitted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Strike Portions of the Complaint filed by Defendant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Strike Portions of the Complaint is continued to [date] at [time].

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 2, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. According to Trustee's calculations, the Plan will complete in 125 months as opposed to the 60 months proposed. Debtor's Plan will complete in 67 months as opposed to 60 months proposed, which exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Debtor's plan proposes to pay \$3,101.86 for 24 months and \$1,653.93 for one month. Debtor's payments in Class 1 total \$4,845.80, which is insufficient to pay the claims.
2. The Plan proposes to pay interest on arrears to both Citi in Class 1, and Green Tree Servicing, LLC; however, these creditors may not be entitled to interest under 11 U.S.C. § 1322(e), unless the notes provide for interest on late payments or applicable non-bankruptcy law requires it.
3. The plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is above median income and proposes a 25 month plan, paying \$3,101.86 per month for 24 months, and \$1,653.93 per month for 1 month with an 83% guaranteed dividend to unsecured claims. According to Form B22C, the Statement of Current Monthly Income, Line #59, the Debtor's monthly disposable income totals \$2,346.66. If the plan is extended to 60 months, which is the applicable commitment period,

unsecured creditors would receive payment exceeding the 83% dividend, and therefore unsecured creditors are not receiving what they are entitled to under 11 U.S.C. § 1325(b).

- a. Double Payments: Debtor deducts \$2,034.75 and \$389.97 on Schedule J, Dckt. No. 11, for ongoing mortgage payments to Debtor's first and second mortgage. These payments are provided for in Class of the Plan. It appears that the Debtor has an additional \$2,424.72 per month to contribute to the plan.
 - b. Tax Payments: It does not appear that the plan provides all of the Debtor's projected disposable income for the applicable commitment period under 11 U.S.C. § 1325(b). On Schedule B, Debtors report an anticipated tax refund of \$30,000.00. Dckt No. 11, Schedule B. It appears that this is income Debtor is not reporting on Schedule I. On March 19, 2014, the Trustee received the Debtor's 2012 Tax Return from Debtor's counsel, which was delivered by US Mail. According to the return, the Debtor received tax refunds of \$7,347.00 from the IRS in 2012, representing federal tax refund for tax year 2011, which would equate to an additional \$612.25 per month.
4. Debtor's Plan fails to provide for Glenshire/Devonshire HOA listed on Schedule D, and while treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that Debtor either cannot afford the payments called for under the Plan because they have additional debts, or that the Debtor wants to conceal the proposed treatment of a creditor.
 5. It appears that Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor fails to allow for the ongoing payment of HOA dues in the plan or Schedule J.
 6. Debtor's Plan fails to indicate in Section 2.06 whether Debtor proposes to pay fees in accordance with Local Bankruptcy Rule 2016-1(c) or whether Debtor will be filing and serving motion for fees in accordance with 11 U.S.C. §§ 329 and 330. Debtor's plan indicates that attorney fees of \$1750 was paid prior to filing and the balance of fees total \$1,750.00. Debtor also fails to propose a monthly dividend toward attorney fees, in Section 2.07, should fees be paid through the plan.
 7. Debtor's Plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor lists on Schedule A, real property located at 10339 Briar Circle, Truckee, California, with a value of \$198,000.00. On Schedule D, Dckt. No. 11, Debtor lists liens held against the property. On Schedule D, the value of the real property is listed as \$396.00. In an attempt to determine an approximately value, the Trustee went to Zillow.com to estimate the value of property. Trustee states that the estimate generated by Zillow.com indicates that Debtor's listed value may be an accurate valuation of the property.

Trustee is advised, however, that figures generated from Zillow.com do not constitute admissible evidence and cannot be relied upon by the court. Fed. R. Evid. 801, 802. There is no exception to the hearsay rule under which a Zillow report can come into evidence; the person who generated the values for a Zillow report is not available to be

cross-examined as to either the underlying facts in the document, and the source for such facts. Thus, a Zillow estimate is merely hearsay and cannot be accepted by the court as a proper valuation of the property.

8. Debtor's non-exempt equity in the property totals \$47,971.19. Debtor also has \$38,321.95 in non-exempt personal property, making Debtor's total non-exempt assets \$86,293.14 and Debtor is proposing an 83% dividend to holders of unsecured claims, which will pay approximately \$14,960.26.
9. At the Meeting of Creditors on March 27, 2014, Debtor admitted that her middle name is Marie. This name is not reported on the petition.
10. The plan does not pay holders of unsecured claims what they would receive in the event of a Chapter 7, 11 U.S.C. § 1325(a)(4). Debtor's non exempt equity totals \$86,293.14 and Debtor is proposing an 83% dividend to unsecured creditors, totaling \$14,960.26. Debtor is married and his spouse is not included in the bankruptcy, but has claimed exemptions under California Civil Code of Procedure § 703.140.

California Code of Civil Procedure §703.140(2)(2) requires Debtors to file a spousal waiver, signed by Debtor and Debtor's spouse, for the use of claimed exemptions. California Code of Civil Procedure § 703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

The Trustee has had not found any such waiver failed with the court after reviewing the docket. The Trustee's Objection to Exemptions, TSB-1, is set for hearing on May 6, 2014.

Based on the foregoing, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 12, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d) (1), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this case, the Debtor's last Motion to Confirm, MOH-1, was heard and denied at the hearing on February 25, 2014. In filing the instant motion, Debtor has failed to correct the following issues:

1. Section 2.06 of the plan indicates that Debtor has paid counsel \$1,000.00 and that \$5,000.00 is to be paid through the plan. Debtor has not filed a Rights and Responsibilities of Chapter 13 Debtors and their Attorneys or Disclosure of Compensation of Attorney for Debtors.
2. Debtor did not file a Declaration in support of the Motion to Confirm setting forth evidence in support of confirmation and the components of 11 U.S.C. § 1325(a).
3. Debtors' Schedules contain the following inaccuracies:
 - a. Schedule E lists two debts to Shasta County Treasurer. Class 5 of the plan provides for these two debts as well as a debt to the IRS and a debt to the FTB. Schedule E does not list the debts to the IRS and FTB.
 - b. Schedule J lists on line 1 a mortgage expense of \$2,398.00. Class 1 of the amended plan provides for the mortgage and arrears payments on Debtor's residence. Class 3 of the plan provides for the

surrender of the real property at 11754 Caughlin Road, Phelan, California. Class 4 of the plan provides for the payment to the rental property at 2925 Favretto Avenue, Redding California and lists that payment at \$1,000.00 per month. Therefore, line 1of Schedule J should only list \$1,000.00 for the Favretto Avenue property.

- c. Line 13a of Schedule J lists a motorcycle payments of \$138.00. This debt is provided for in Class 2 of the plan.
 - d. Line 13b lists a payment of \$290.50 to Rental-Caughlin, which, according ot the amended plan, is being surrendered.
 - e. Adjusting the Schedule for these amounts causes the net income on line 20c to be \$4,355.00.
- 4. Debtor may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6) because Debtor does not list any business expenses or self-employment tax expenses on Schedule J.
 - 5. Debtor's plan does not provide for the secured claim of the Shasta County Tax Collector. The debt was scheduled as priority for \$8,103.00 and the creditor filed a secured claim for \$33,625.30 at 18% interest. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), not providing for treatment may indicated that Debtor either cannot afford the plan payments because of additional debts, or that Debtor wishes to conceal the proposed treatment of a creditor.
 - 6. Debtors plan will not complete in 60 months, 11 U.S.C. § 1322(d). Section 2.15 of the plan proposes to pay 100% of unsecured debts listed at \$3,648.00. Creditor USS Cal Builders, Inc. filed an unsecured claim on January 3, 2014 (Claim #7) for \$50,000.00. The plan will take 226 months to pay all claims in full, including the Shasta County claims.
 - 7. Debtor's plan does not pass the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtors non-exempt assets total \$179,041.00 and Debtor proposes to pay 100% to unsecured creditors; however, the plan will not pay all creditors as proposed. According to Schedules A, B, and C, non-exempt equity exists in the following real and personal property:
 - a. \$111,000 real property at 2925 Favretto Avenue, Redding, California (rental);
 - b. \$57,575.00 real property at 9121 Chaparral Road, Redding, California (residence);
 - c. \$1,000.00 firearms;

- d. \$2,000.00 1999 Chevy Suburban; \$2,500.00 2001 Ford Econoline;
 - e. \$800.00 2001 Kit Travel trailer;
 - f. \$1,000.00 1987 Fireball Travel Trailer; \$1,166.00 2006 DRZ 400 Suzuki;
 - g. \$2,000.00 1987 Glastron Boat
- \$179,041.00 total non-exempt

- 8. Debtor's Amended Plan fails to provide for the secured claims of Premier Finance Bank on a 2006 Suzuki Motorcycle, Springleaf Financial Services on a 1999 Chevy Suburban, and Nick Kareotes on real property at 11754 Caughlin Road, Phelan, California. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtor either cannot afford the plan payments because of additional debts, or that the Debtor wishes to conceal the proposed treatment of a creditor.
- 9. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Class 2A of the plan lists debts to Navajo Capital and Ville Holdings for \$4,000.00 each, and proposes to pay 4.5% interest. The additional provisions of the plan indicate that the claims should only be for the amount of principal owed and not include interest. Navajo Capital, Inc. has filed a secured proof of claim, Court Claim No. 4 for \$10,400.00. Debtor has not filed any Motions to Value the Secured Claims of these creditors to date.
- 10. Additionally, Trustee states that the IRS priority claim filed causes the plan to exceed 60 months, which exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The plan provides for priority claims of \$13,835.76 to the Internal Revenue Service. The Internal Revenue Service has filed a priority claim for \$29,389.06 on April 9, 2014. (Amendment 1 to Claim #13).

The amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 17, 2014. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee filed a statement of non-opposition to Debtor's Motion to Confirm Plan on April 14, 2014, stating that all of Trustee's previously expressed concerns had been addressed. Dckt. No. 41.

The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 17, 2014, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 27, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Abandon Real Property has been set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 6007(b) and Local Bankruptcy Rule 9014-1(f)(1). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is deny the Motion to Abandon Real Property. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

REVIEW OF THE MOTION

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

Here, the property commonly known as 210 North Shore Drive, #14, South Haven, Michigan, is impaired by a deed of trust in favor of Ocwen Loan Servicing, LLC, securing a loan with the balance in excess of \$266,621.00, which does not include a delinquent balance of \$1,650.00 in homeowners' association fees. The Debtors seek to value the property at a fair market value of \$255,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Thus, Debtors argue that the equity in the subject property has been exhausted, and the debt secured by the property exceeds the value of the property.

Debtors also state in their Declaration that the property, a rental condominium, has not generated a profit for more than three years, due to a drop in the demand for vacation rental properties over the last 7-8 years. Debtors' continued ownership of the condominium also subjects them to continuing future liability of ongoing Homeowners' Association fees of \$300.00 per month, utility charges of at least \$215 per month, and mortgage payments of \$1,761.70 per month.

Debtors state that "as a result of these negatives," the property

has been listed for sale through Castaway Rentals and Real Estate, who recently procured unrelated Buyers by the name of Jerry Kiska and Katty Kiska, who have signed a short-sale contract (a copy of which is attached as an Exhibit to the Declaration), offering to purchase the condominium for its current fair market value of \$255,000.00, which sale is in escrow pending the mortgage lender's approval. Pursuant to 11 U.S.C. § 554(b), Debtors request that the court grant an order abandoning any interest which the Trustee has in the subject property. Debtors claim that there are negative financial consequences of the Estate retaining the property, and that the property is of inconsequential value and benefit to the Estate.

OBJECTION BY TRUSTEE

Trustee objects to Debtors' Motion on the following grounds;

1. The Motion appears to seek the abandonment of property of the estate, with opposition required prior to the scheduled meeting of creditors of April 24, 2014 at 10:30 am, and prior to the time period to object to the exemption claimed on Schedule C (Dckt. No. 1, Page 14), in any and all rental income in the property. Debtors are in possession of the estate, and Debtors have proposed a plan to surrender it. Dckt. No 5, Section 2.10. The plan provides that the estate shall vest on confirmation in the Debtor, but if the motion for abandonment is granted, Trustee notes that Local Bankruptcy Rule 3015-1(b) may still require a motion for Debtors to sell for transfer property with a value of \$1,000.00 or more, as it does not limit itself to property of the estate, potentially because the vesting of the estate at confirmation may raise certain issues.

Trustee states the motion provides sufficient details of the proposed short sale that the court may want to address the short sale proposed, although it is not clear that the Debtor will be required to proceed with a short sale, in the event that the motion to abandon is granted. Trustee may want to oppose abandonment, depending on the results of the meeting of creditors.

2. Motion to Sell: The Trustee is not opposed to the proposed short sale. Debtors list the value of the real property located at 210 North Shore Drive, #14, South Haven, Michigan, at \$255,000 with a secured note of \$266,621, and total of all liens of \$271,681. Debtors' motion indicates that the sales price is \$255,000, which would not leave any funds for the Debtor. Based on the foregoing, Trustee requests that the short sale be approved, and the Motion for Abandonment be denied as unnecessary should the short sale be approved.

DEBTORS' REPLY to TRUSTEE'S OBJECTION

Debtors respond by stating that the Debtors accept the Trustee's responsive pleadings, and join in with the Trustee in requesting that the instant Motion be construed as a Motion for Approval of Sale. Dckt. No. 24.

DISCUSSION

The court cannot approve the short-sale of Debtor's rental property on the basis of the current Motion, for several reasons.

First, the Bankruptcy Code only permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors' Notice of Hearing states the following:

PLEASE TAKE NOTICE that at the date, time, and place indicated above, Debtors SCOTT JEROME LEA and LINDA RAE LEA will move the above-entitled Court...for an Order abandoning any interest which the Bankruptcy Trustee may have in Debtors' vacation rental condominium...

Dckt. No. 9. This Notice is not sufficient to apprise creditors, potential overbidders, lien holders, and other respondents that the subject of the Motion is the requested approval of the short-sale of Debtors' property. The agreement of Debtors and Trustee to treat the Motion as a Motion to Sell under 11 U.S.C. § 363 is memorialized in an objection and reply that were served on Debtors and Trustee only. Prospective respondents will not be given the opportunity to respond to what Debtors suggest should be treated as a magically transmuted, unnoticed Motion to Sell .

Second, Debtors' Motion does not cite any legal authority supporting the court's approval of a sale of the subject property. Failure to cite legal authority justifying the relief sought is a ground for denial of the motion. Local Bankruptcy Rule 9014-1(d)(5), 1001-1(g). Local Bankruptcy 9014-1(d)(5) requires that each motion, opposition, and reply cite legal authority relied upon by the filing party. It is not for the court to canvas other pleadings, and wait until the hearing, to receive additional evidence from a movant to "draft the motion" for Movants.

Third, Debtors have not stated the grounds upon which they request relief with the particularity required by Federal Rule of Bankruptcy Procedure 9013. The Motion to Abandon Property, now being described as a Motion to Sell, does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the terms of the sale. Debtors attach their proposed purchase agreement with the named Buyers (Dckt. No. 11), but exclude critical details required to be incorporated into a Motion to Sell, including information regarding, for example,

- The proposed distribution of the proceeds;
- whether the liens secured by loans on the property will be satisfied through the funds received in the sale;
- information about overbidding procedures for potential bidders who may choose to appear at the hearing;
- what connection, if any, the Buyers have to Debtors;
- whether the broker or real estate agent, who appears to be Castaway Rentals and Real Estate in this case, will be paid commission, and if so, what percentage of the actual purchase price Broker will be paid upon consummation of the sale;
- whether Debtors are receiving any proceeds of the sale, or what will

happen to any monies not disbursed to creditors holding claims secured by the property or paying the fees and costs allowed, etc.

Even if the court, on its accord, decides to consider the Motion as an *ex parte* Motion to Sell (interpreting the Motion to be something that is other than what it purports to be), the Motion would still not comply with the requirements of Local Bankruptcy Rule 3015-1. Local Bankruptcy Rule 3015-1(b) (1) states that debtor shall not transfer, encumber, sell, or otherwise dispose of any personal or real property with a value of \$1,000.00 or more other than in the ordinary course of business without prior Court authorization. To obtain Court authorization, the debtor must comply with LBR 3015-1(i).

Local Bankruptcy Rule 3015-1(i) (4) provides that:

Sale of Property. The Court may approve an *ex parte* motion by the debtor to sell real or personal property with a value of \$1,000.00 or more other than in the ordinary course of business if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:

(A) The sale price represents a fair value for the subject property;

(B) All creditors with liens and security interests encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer;

(C) All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds;

(D) The sale price is all cash;

(E) The debtor will not relinquish title to or possession of the subject property prior to payment in full of the purchase price; and

(F) The sale is an arm's length transaction.

Debtors' Motion does not state whether the purchase price represents a fair value for the property, whether all creditors with security interests encumbering the property will be paid in full before or concurrently with the transfer of title from Debtors to buyers; the costs of sale; whether the sale prices is all cash; and whether the sale is an arm's length transaction.

In the absence of such information, the court cannot determine whether the proposed sale is in the best interest of the Estate, and no procedures have been established to allow the court to consider any additional offers from other potential purchasers at the scheduled hearing. The court will not grant the current Motion as a Motion to Permit Debtor to Sell Property.

Additionally, the Motion to Compel Abandonment of the Real Property cannot be granted at this time. As Trustee has highlighted, Debtors are seeking the abandonment of property prior to the 11 U.S.C. § 341 Meeting of Creditors, and prior to the deadline for the Trustee to object to Debtors' exemptions, as claimed on their Schedule C, in rental income in the property. The Trustee has not been afforded a reasonable opportunity to inspect the property, and investigate Debtors' claim of exemptions and whether they are entitled to such exemptions, including the \$6,000 exemption claimed by Debtors under California Civil Code of Procedure § 703.140(b)(5) in any rental income in the condominium. Thus, the Motion to Compel Abandonment of the Real Property is also denied.

The court also notes that Debtors are also attempting to sell and dispose of the property, without having first made a Motion to Sell to obtain court authorization under Local Bankruptcy Rule 3015-(b), or having notified the Trustee. This is patently improper, and Debtors have not alleged whether the sales proceeds will be distributed to creditors holding security interests in the subject property. Quite possibly the sale might not satisfy creditor demands, and pose a detriment to creditors of the estate. The fact that it appears that Debtors only have contemplated the consequences of failing to file a Motion to Sell in light of Trustee's opposition to the Motion is particularly troubling to the court. Given their intention to conduct a short-sale of the property of the estate, Debtors are well advised to file a Motion to Sell the above mentioned property.

ISSUANCE OF A COURT DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Abandon Property filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is denied.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 13, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor is delinquent \$1,851.00 delinquent in plan payments to the TRustee to date, and the next scheduled payment of \$1,852.00 is due on April 25, 2014. The case was filed on November 21, 2013, and the Plan in Section 1.01 calls for payments for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$3,308.00 into the Plan to date.

The amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 31, 2014. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

Debtors move the court for an order valuing the secured claim of Green Tree Servicing LLC. The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 1417 Woodbridge Court, Redding, California. The Debtors seeks to value the property at a fair market value of \$170,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$193,000.00. Green Tree Servicing, LLC's second deed of trust secures a loan with a balance of approximately \$48,000.00. Therefore, Debtors argue that the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Here, Debtors seek to value the collateral of "Green Tree Servicing LLC." Green Tree Servicing, LLC, filed Proof of Claim No. 1 on the claims registry for \$49,060.24, indicating "Money Loaned" as the basis for the claim. However, it has been repeatedly represented in this court that loan servicing companies including Green Tree Servicing LLC are not creditors (as that term is defined by 11 U.S.C. § 101(10)), but are mere loan servicing agents with no ownership of or in the secured claim. To state that the Second Deed of Trust is "held by Green Tree Servicing LLC," and that the first deed of trust in the subject property is held by "Ocwen Loan

Servicing" indicates that Debtors have no knowledge of who the actual creditor in interest is who holds the claims secured by the first and second deeds of trust.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. FN.1.

FN.1. This court has previously addressed with Green Tree Servicing, LLC the requirement that it accurately identify its status in a bankruptcy case - whether creditor, loan servicer for the creditor, agent of the creditor, or holder of a power of attorney authorized to act for the creditor in legal proceedings or in executing documents in the name of the creditor. In the *Edwin L. and Cynthia Crane* bankruptcy case, Bankr. E.D. Cal. 11-27005, Dckt. 124, the court entered an order requiring Green Tree Servicing, LLC to correctly identify the creditor in cases, and for Green Tree Servicing, LLC not to identify itself as the creditor,

"unless it is the holder of all legal rights to enforce the claim in its own name, as the assignee for collection, or as the holder of a power of attorney for another and is the agent for service of process for all purposes for any other person who holds any legal rights to enforce the claim. Any proofs of claim shall have attached to them documentation of the assignment, power of attorney, and general agent for service of process for any claims for which Green Tree Servicing, LLC asserts it is a creditor."

See Civil Minutes of the November 8, 2011 hearing in the *Crane* case in which the court addressed and rejected the contention that a mere agent or loan servicer may present itself as the actual creditor with a claim. *Id.*, Dckt. 111.

Other cases in which the court has issued orders to show cause and Green Tree Servicing, LLC has filed responses and represented that its practices have been modified to correctly identify the creditor include: *John and Susan Jones*, Bankr. E.D. Cal. 11-31713; and *Matthew and Kristi Separovich*, Bankr. E.D. Cal. 11-42848.

The Debtors provide no evidence for the court to determine who the proper creditor is on this loan. The Debtors do not testify that they borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred from a certain creditor to Green Tree Servicing, LLC. The Debtors do not provide the court with any discovery conducted to identify the creditor holding the claim secured by the second deed of trust. Debtors offer no exhibits and identify some entity referred to as "Green Tree" as the holder of the Second Deed of Trust in their Declaration, filed as Dckt. No. 15. Debtors list "Green Tree" as a creditor in possession of the second mortgage on their Schedule D.

No assignment or transfer of claim appears on the docket transferring any interest to Green Tree Servicing, LLC. The court is not certain how Debtors can name to Green Tree Servicing, LLC as the actual

lender for an obligation that appears to be owed to another originating entity. The court will not approve an loan modification that will not be effective against the actual owner of the obligation. FN.2.

FN.2. Debtors and its attorneys may be thinking, "really judge, do you think that a mortgage debt buyer, bank, and loan servicer would do anything other than what was proper." One only has to look to the home mortgage meltdown after 2007 in which mortgage brokers generated liar loans, mortgage debt buyers purchased debt without regard to loan documentation, real property title place holders (with no interest in or right to exercise any ownership rights in the note) purported to be owners of the notes, and banks engaged the services of robo-signers to process foreclosures and provide false declarations to understand why being truthful and accurate is necessary not only in the federal courts, but as part of ordinary commercially reasonable practices.

The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is denied.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 14, 2014. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Trustee objects to confirmation of Debtors' Third Modified Plan for two reasons.

First, Debtors have paid ahead \$2,843.00 under the modified plan. Debtors' modified plan proposes \$59,208.00 total paid in through March 14, 2014, then \$2,637.00 per month thereafter. Under the proposed plan, Debtors would need to have paid to the Trustee a total of \$61,845.00 through March, 2014 (\$59,208.00 + \$2,637.00 (payment due March 25, 2014) - \$61,845.00).

Second, Debtors' Plan payment terms appear to be incorrect. Debtor has actually paid \$64,688.00 through March with the last payment of \$5,480.00 posting March 25, 2014 (\$64,688.00 - \$61,845.00 = \$2,843.00 paid ahead). Debtors' modified plan proposes a plan payment of \$59,208.00 as of March 14, 2014, then \$2,637.00 per month for months 33 through 60. Debtors have paid \$59,208.00 to the Trustee through February, 2014 (month 33, where Debtor's petition was filed on May 18, 2011). Trustee believes that Debtor's payments of \$2,637.00 are actually to begin in month 34, in March of 2014. Trustee would have no objection if this were corrected in the order confirming.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on April 2, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that,

1. The Plan relies on a pending motion. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on the Motion to Avoid Lien of Southern Wine and Spirits, SAC-1, which is set for hearing on April 22, 2014. The Motion to Avoid the Lien of Southern Wine and Spirits, SAC-1, was granted by this court on that hearing date. Thus, this part of Trustee's objection is resolved.
2. The Trustee is unable to determine whether the Debtors can make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). The Trustee is unable to determine the feasibility of the plan, Debtor's Schedule I, which shows that at least a portion of Debtors' income is from a family contribution. However, Debtor has not filed declarations by the contributors to prove that these contributions are likely to occur.
3. Debtors' Plan may not meet the requirements of the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$12,263.00, and the Debtors are

proposing a 3.35% dividend to unsecured creditors which will pay approximately \$12,424.00. Debtors list on Schedule B, Dckt. No. 1, page 15, line 23, a liquor license with a value of \$10,000. Debtor is proposing to keep the asset.

The Trustee is uncertain whether Debtors have adequately valued the asset, and requests that Debtors provide information on how the value was estimated. At the 341 Meeting held on March 27, 2014, Debtors indicated that the value was an estimate of a third party, and that the information on the value was given some time ago. When examined by the Trustee's representative, the Debtors appeared uncertain what the value of the asset is currently.

RESPONSE TO OBJECTION BY DEBTORS

Trustee objects to confirmation on the basis that confirmation is dependent upon the court granting the motion to avoid liens set for hearing on April 22, 2014. Debtors state that they anticipate this motion will be granted. The Motion to Avoid the Lien of Southern Wine and Spirits, SAC-1, was indeed granted by this court on April 22, 2014.

Debtors state that Trustee also objects to confirmation, on the basis that Debtors have not submitted a declaration from their Daughter, who will be contributing \$1,000 per month to the plan. Debtors claimed that the declaration has been filed concurrently with the reply to Trustee's Objection. In the Declaration of Manmeet Cheema, who purports to be the daughter of Debtors, states that she resides with her parents and would give them \$1,000 per month. She testifies that she will continue to give her parents the \$1,000 per month as long as needed to fund their 60 month plan. Dckt. No. 27.

Debtors acknowledge that the Trustee objects to confirmation on the basis that Debtors have failed to provide evidence, beyond their testimony, regarding the value of the liquor license. Debtors assert that the requested evidence is filed with the response, but provide no supplementary evidence of value for the license. The license is listed on Debtors' Schedule B as:

Liquor License...Location: 5406 Waterville Way, Sacramento
CA 95835...10,000.00

REPLY BY CREDITOR

A letter addressing the court was filed by Surjit Singh ("Singh," or "Creditor"), who identifies himself as a creditor in this bankruptcy case. The court notes that Singh has filed Proof of Claim No. 4, asserting a claim of \$84,000.00, indicating that a "promissory note" is the basis of that claim.

In his letter, Singh states that he believes that the value of the liquor license has not been "disclosed properly," and that he draws his knowledge of the market value of licenses from his 10 years of experience in the liquor business, citing geographical location, availability, and type of license in factors that may determine the license value. Singh argues that in Sacramento County, there are limited 21 off sale liquor licenses, so the "market value of the license is likely to be much higher." He then requests

April 29, 2014 at 2:00 p.m.

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to purchase the \$10,000.00 to buy the license, and wants permission to attend the hearing on April 29, 2014 to discuss the matter. Dckt. No. 29.

In contesting the value of the property, Creditor has not indicated that he has a security interest in the subject license. Creditor is not attempting to offer its valuation of a claim in the license. Additionally, Debtors have evinced an intent to keep the license, and the Trustee and Debtor have not brought a motion to sell the property under 11 U.S.C. § 363. Thus, Creditor's reply is not of assistance to the court. Creditor's challenge of the value of the license does however, cast additional doubt on Debtors' vague allegations surrounding the value of the property.

Debtors have not provided competent evidence of their valuation of the liquor license on Schedule B. Based on this unresolved issue raised in the Trustee's objection, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 18, 2014. By the court's calculation, 43 days' notice was provided. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee and a creditor having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, both the Chapter 13 Trustee and a Creditor have filed opposition to the Plan.

The Trustee opposes confirmation of Debtors' Motion for two reasons. First, Debtors have not used the new Official Forms B 6I and B 6J, which became available on December 1, 2013, when they filed the amended Schedules on March 7, 2014. Dckt. No 128. The use of the new form would allow Debtors to demonstrate if the amended Schedules were the correct income and expenses from the date of filing, or instead the correct income and expenses from a certain date.

Second, the Debtors' Plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b), or Debtors may not be able to make plan payments under 11 U.S.C. § 1325(a)(6). Debtors are above median income, and have reduced their household living expenses by \$1,335 in addition to removing the business expenses of \$6,780. Debtors have not explained how they are able to make such drastic changes, and still be able to maintain the proposed plan payment of \$143.87. Debtors have not addressed in the present declaration any licensure requirement, which has been raised in Creditor's objection. Dckt. No. 156.

OBJECTION BY CREDITOR

Creditor Schools Financial Credit Union ("Creditor") objects to confirmation of the Third Amended Chapter 13 Plan. At the time of the filing of the petition, objecting creditor Schools Financial Credit Union

was the holder of a perfected security interest in a 2006 Honda Odyssey. The original Chapter 13 Plan listed the debt owed to the Credit Union in Class 4.

On November 18, 2013 the Debtors filed a Motion to Value Collateral, DAO-1, which argued that the value of the vehicle at \$8,000. The Credit Union filed opposition on several grounds. At the hearing on December 17, 2013, the Court established the value of the collateral at \$11,800. Dckt. No. 71.

On December 11, 2013, the Credit Union filed a Motion for Relief, RTD-1. The Court set an evidentiary hearing for April 9, 2014, DAO-03. After the Court set the matter for an evidentiary hearing, the Debtors filed their Third Amended Chapter 13 Plan. In that plan, Debtors changed the classification of the debt owed to the Credit Union to class 3. In the Third Amended Chapter 13 Plan the Debtors did not include a provision authorizing the prior disbursements made by the trustee to the Credit Union.

Creditor also argues that the amount of the plan payment is unclear. In this plan the Debtors have decreased their plan payment from \$319.80 to \$143.87. The basis for the decrease is apparently a change in jobs by the Debtors. The Credit Union submits that there is inadequate evidence regarding the income of the Debtors to determine if the plan is feasible and represents the best efforts of the Debtors. In the section for Name of Employer for Debtors in Debtor's Amended Schedules, Debtors indicate that they are "Self Employed - Filer Moving". However, the Debtors inserted the following statement in section 17 on Schedule I: "Husband began work as a waged employee on March 3, 2012. He will be paid at a rate of \$20.50 per hour and expected to work 48 hours per week." The amended schedules were not filed as Exhibits to this Motion and copies were not served on the parties in interest. Debtors' Motion to Confirm the Amended Plan and jointly filed Declaration do contain any information relating to a loss of work or jobs by either of the Debtors. Dckt. Nos. 139 and 141.

Based on the Trustee and Creditor's objections, the court determines that the amended Plan goes not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 2, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on May 22, 2014 at 10:30 am. Trustee does not have sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1325.

Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

15. [14-22442-C-13](#) JACQUELINE THOMPSON
BLG-1 Paul Bains

**MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
3-14-14 [[15](#)]**

Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 14, 2014. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$19,753.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2006 Cadillac Escalade ESV. The Debtor seeks to value the property at a replacement value of \$19,753.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2006, more than 910 days prior to the filing of the petition, with a balance of approximately \$23,889.05. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$19,753.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, NA secured by 2006 Cadillac Escalade ESV, is determined to be a secured claim in the amount of \$19,753.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$19,753.00 and is encumbered by liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 31, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Final Ruling: The Application for Additional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Application for Additional Fees is granted. No appearance required.

FEES REQUESTED

Peter G. Macaluso, Counsel for the Debtor, makes a Request for the Allowance of Additional Fees and Expenses in this case. The period for which the fees are requested is for the period December 17, 2012 through September 18, 2013.

Description of Services for Which Fees Are Requested

Reviewed Motion to Dismiss: Counsel spent 0.30 hours in this category for total fees of \$60.00. Counsel received and reviewed Motion to Dismiss, DPC-1, filed by Trustee.

Correspondence regarding Motion to Dismiss: Counsel spent 0.40 hours in this category for total fees of \$80.00. Counsel prepared and sent a letter to the client regarding motion to dismiss and payments still delinquent.

Prepared for Meeting and Met with Clients regarding Motion to Dismiss: Counsel spent 0.90 hours in this category for total fees of \$180.00. Counsel reviewed case in preparation for meeting with clients and met with clients to discuss the motion to dismiss and possible conversion.

Prepared and filed Motion to Modify (PGM-4): Counsel spent 1.20 hours in this category for total fees of \$240.00. Counsel prepared and

filed motion to modify (PGM-4).

Work Relating to Opposition to Motion to Dismiss (PGM-4): Counsel spent 3.30 hours in this category for total fees of \$660.00. Counsel received and reviewed oppositions to motion to modify (PGM-4), prepared and filed responses to the opposition to motion to modify (PGM-4), appeared for hearing on motion to modify (PGM-4) on February 26, 2013 (continued), appeared for hearing on the hearing on the motion to modify (PGM-4) on April 23, 2013 (continued), and appeared for hearing on the continued hearing on the motion to modify (PGM-4) on July 2, 2013 (denied).

Reviewed Notices of Mortgage Payment Change: Counsel spent 0.50 hours in this category for total fees of \$100.00. Received and reviewed two separate notices of mortgage payment change.

Prepared for Meeting and Met with Clients regarding Formulation of a New Plan: Counsel spent 0.90 hours in this category for total fees of \$180.00. Counsel reviewed case in preparation for meeting with clients and met with clients to formulate a new plan.

Prepared and filed Motion to Modify (PGM-5): Counsel spent 1.20 hours in this category for total fees of \$240.00. Counsel prepared and filed motion to modify (PGM-4).

Work relating to Opposition to Motion to Modify (PGM-5): Counsel spent 1.60 hours in this category for total fees of \$320.00. Counsel received and reviewed opposition to motion to modify (PGM-5) filed by Trustee, prepared and filed responses to the opposition to motion to modify (PGM-5), appeared for hearing on motion to modify (PGM-5) on September 10, 2013 (granted), prepared and sent a letter to client regarding the outcome of the hearing, and prepared and sent an order to modify to the Trustee for signature.

DISCUSSION

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (i) unnecessary duplication of services; or
- (ii) services that were not--
 - (I) reasonably likely to benefit the debtor's estate;
 - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the legal services undertaken as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [legal fee] tab without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that Counsel's services performed after confirmation were necessary and beneficial to the success of the Debtor's ability to complete her Chapter 13 plan. Counsel filed Motions to Modify the Plan to maintain the case after a motion to dismiss was filed by the Trustee. The post-confirmation work performed was substantial and unanticipated, and the initial agreed-upon fee of \$3,500.00 was not sufficient to fully compensate the attorney for the legal services rendered. The court finds the services were beneficial to the estate and reasonable.

FEES ALLOWED

The hourly rates for the fees billed in this case are \$200.00/hour for Counsel for 10.3 hours. The court finds that the hourly rates reasonable and that Counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$2,060.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

The total costs in the amount of \$2,060.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel is allowed, and the Trustee is authorized to pay, the following amounts as compensation as a professional in this case:

Attorneys' Fees	\$2,060.00
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The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso , Counsel for the Estate
Applicant's Fees Allowed in the amount of \$ 2,060.00,

IT IS FURTHER ORDERED that this is an award of fees pursuant to 11 U.S.C. § 331, which are subject to final review and allowance pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted. No appearance required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on March 11, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2014. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on March 11, 2014, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 2, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claims in full. Debtor's Plan relies on the Motion to Avoid the Lien of Vicki LaGree, which is set for hearing on April 22, 2014. That Motion, designated CAH-1 on the docket, was granted.

The objection is overruled. Because no Motion to Confirm has yet been filed, confirmation of the Plan is premature.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on March 26, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to sustain the Objection to Debtor's Claim of Exemptions. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor has claimed exemptions under California Code of Civil Procedure §703.140, and appears to be married based on his Schedule I, Dckt. No 13 at 14. Debtor's spouse has not joined in the petition. California Code of Civil Procedure §703.140(a)(2) requires Debtors to file a spousal waiver, signed by Debtor and Debtor's spouse, for the use of claimed exemptions.

California Code of Civil Procedure § 703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

Upon a review of the docket, the court notes that a Spousal Waiver, signed by both Debtor and his non-filing spouse on April 14, 2014, was filed on April 15, 2014. This part of Trustee's Objection to Debtor's Exemption is overruled.

Additionally, according to Debtor's Schedule C, Debtor has claimed his interest in furs and jewelry having an aggregate value of \$450.00. Debtor lists these items as exempt under California Code of Civil Procedure § 703.140(b)(3). This exemption is limited to household furnishing, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, and not furs, jewelry and automobiles.

Debtor has not filed an Amended Schedule C, correcting his claim of exemption of \$450.00 in furs and jewelry under California Code of Civil Procedure § 703.140(b)(3). Thus, this part of the Objection will be sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Debtor's Claim of Exemptions filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained and Debtor is denied the \$450.00 exemption claimed in furs and jewelry pursuant to Cal. Code Civ. P. § 703.140(b)(3)

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2014. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The court notes that Debtor filed an Amended Notice of Hearing and Amended Certificate of Service, correcting Debtor's error in the original Notice (which stated that the hearing on this matter is taking place on April 29, 2014 at 1:30 pm--rather than the correct date and time of April 29, 2014 at 3:00 pm). Dckt. Nos. 82, 85, 89, and 91. The court determines that Debtor's incorrect listing of the hearing time is minor, and will waive the defect at this time. The Trustee having filed an opposition to the Motion, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee has filed confirmation to the proposed plan, asserting that it appears that Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6).

Debtor is delinquent \$722.00 under the terms of the proposed modified plan. According to the proposed modified plan, payments of \$20,216.00 have become due. Debtor has paid a total of \$19,494.00 to the Trustee with the last payment posted on January 2, 2014, in the amount of \$722.00.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by

the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

22. [14-21761](#)-C-13 RAYMOND WOLFE
TSB-1 Steven Alpert
OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
4-2-14 [[16](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 2, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for two reasons.

First, Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because Debtor's Plan relies on the Motion to Value the Secured Claim of Springleaf Financial, but has not filed a motion to value collateral. Debtor's plan does not have sufficient monies to pay the claim in full.

Second, Debtor has apparently misclassified two claims, including the claim for Santander Consumer as Class 4 in the plan. The plain language of the plan in Section 2.09 shows that Class 2 claims are secured claims modified by the plan, or have matured or will mature before the plan is complete. Debtor lists in Class 4, Santander Consumer with a monthly contract payment of \$420.00 per month. The balance of the loan listed on Schedule D is \$14,400.00. It appears the claim will be paid in full prior

to the conclusion of the 60 month plan proposed, and therefore should be provided for in Class 2 of the Plan.

On March 26, 2014, Santander Consumer USA filed Court Claim No. 2. The claim includes the purchase contract, which shows that the final payment due on the loan is September 2, 2018, which is within the life of the plan. It appears the claim should be provided for in Class 2 of the plan. Debtor indicates in Class 4 that the claim is paid by his non-filing spouse; however, according to Schedule I, the non-filing spouse does not work or have any source of income.

Debtor has also misclassified the claim for Pension, Annuities, and Settlements, LLC as Class 2 in the plan. On March 19, 2014, Pension, Annuities, and Settlements, LLC filed Court Claim No. 1, which indicates the claim is wholly unsecured. It appears that the claim should be provided for as a general unsecured claim.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 22, 2014. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The respondent creditor, having filed an opposition, the court will address the merits of the motion. Oral argument will not assist the court in this matter.

The court grants the Motion to Value Collateral and determines the value of creditor's secured claim to be \$9,500.00. No appearance is required at the April 29, 2014 hearing.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2009 Scion xB. The Debtor seeks to value the property at a replacement value of \$6,960.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2012, less than 910 days prior to the filing of the petition, with a balance of approximately \$13,372.88. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,960.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The Debtor asserts that 11 U.S.C. § 1325(a) (9) has been satisfied because the Scion was not acquired for personal use but rather primarily for work, is required as a condition of the Debtor's continued employment and, by extension, is necessary to his reorganization under Chapter 13. On these facts, the relevant portion of § 1325(a) (9) would prohibit operation of § 506 only "if the debt was incurred during the 1-year period preceding that filing." However, the debt owed to Schools FCU was incurred more than one and one-half years (606 days) prior to the Debtor's Chapter 13 filing.

Creditor's Objection

Schools Financial Credit Union (hereinafter "Credit Union") contends that the Debtor's travel to stores for his employment (Docket 20, Paragraph 8, Declaration of Debtor) is in the same nature as commuting and it does not constitute business use. The Credit Union also contends that the majority of the use is for pleasure and the travel to stores is an incidental use of the vehicle. According to the logs, the Debtor drove the vehicle 39,283 miles between the time that he purchased the vehicle on June 27, 2012 and February 2, 2014. The mileage listed on the logs totals 14,315 miles. Thus, the

mileage driven for reimbursement purposes totals 36.4% of his total use.

The Debtor contends that the value of the vehicle is \$6,960. It is the position of the Credit Union that the Debtor has failed to present admissible evidence to establish that the value of the vehicle is \$6,960.

DISCUSSION

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if:

(i) the lien securing the claim is a purchase money security interest,

(ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use.

11 U.S.C. § 1325(a) (hanging paragraph). The debtor's property may not always be subject to the requirements of the so-called "hanging paragraph." The decision of *In Re Horton*, 398 B.R. 73 (Bankr. S.D. Florida 2008), and the court's discussion of when collateral is covered by the hanging paragraph of § 1325(a) is particularly instructive on this issue. In that case, the court held that if a motor vehicle was acquired for business use within a year of the filing, it is not covered by either clause of the hanging paragraph and the Debtor may seek valuation and strip down of the secured debt under § 506. The court in its decision states,

A majority of courts addressing the issue have ruled that a car that was not acquired for the personal use of the debtor is not subject to the second clause of the hanging paragraph. *In re Balsinde*, 2007 WL 4247642 (Bankr. S.D.Fla.2007). In *Balsinde*, the debtor filed a Chapter 13 petition within one year of purchasing a motor vehicle. At the time of filing, the secured creditor was undersecured and the debtor sought to strip down the lien to the value of the collateral. HSBC, the secured creditor, argued that since the vehicle was purchased within one year of filing, the lender was protected under "the last two lines of the hanging paragraph, which state 'or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.'" *In re Balsinde*, 2007 WL 4247642 at *2 (quoting 11 U.S.C. § 1325(a)).

Several other courts have reached the same conclusion. See *In re Hayes*, 376 B.R. 655 (Bankr.M.D.Tenn.2007) (reasoning that the analysis under the 1325 hanging paragraph begins with the identification of the collateral and adding that "the collateral specific distinction in the hanging sentence is evidence of Congressional intent to treat motor vehicle collateral differently than any other collateral."); *In re Ford*, 2008 WL 1925153 (Bankr.E.D.Wis. 2008) (on facts identical to those in the instant case, the court held that debtor's

Nissan Maxima is a motor vehicle and thus treated only under the first clause of the hanging paragraph); *In re Parish*, 2006 WL 1679710 (Bankr.M.D.Fla.2006) (holding that a motor vehicle is specifically not "any other thing of value"); *In re Hickey*, 370 B.R. 219 (Bankr.D.Neb.2007) (finding that the hanging paragraph creates two classes of collateral: motor vehicles and all other things of value); *In re Curtis*, 345 B.R. 756 (Bankr.D.Utah 2006) (finding that a tractor is not a motor vehicle for purposes of 1325(a), but recognizing that motor vehicles are treated differently under the hanging paragraph); *In re Ellegood*, 362 B.R. 696 (Bankr.E.D.Va.2007) (concurring with the Parish and Curtis courts' proposition that the "hanging paragraph" creates two categories of collateral).

In Re Horton, 398 B.R. 73, 75-78 (Bankr. S.D. Florida 2008). Factual information relevant to the hanging paragraph of §1325(a) is an essential aspect of the grounds for the relief sought that should be contained in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013.

In this case, the debtor seeks to value collateral consisting of a motor vehicle. Debtor states in his declaration that his job requires him to travel to retail stores, and that Debtor maintains a log of his mileage for reimbursement and tax purposes. He testifies under the penalty of perjury that the majority of his driving in the vehicle is directly related to his employment. Dckt. No. 20.

Debtor asserts that the replacement value of the Scion is \$6,960, and this figure from generating values from the Edmunds.com and Kelly Blue Book sites, which indicate that the private party value of the vehicle would be \$7,200 and \$6,853, respectively. The NADA Web site indicates a "clean retail" value of \$10,500, but Debtor argues that his Scion is not "clean retail," and that the vehicle includes a number of deficiencies like a cracked windshield, bald tires, broken transmission, air filters and brakes that need to be replaced, and other repairs and touch-ups. The Debtor states that he is required to have "an economical and reliable vehicle" for his line of work, as he is a merchandiser. *Id.*

SETTLEMENT

Creditor Schools Financial Creditor Union filed a "Notice of Settlement" on April 24, 2014, Dckt. No. 45, stating that the parties have agreed that, for purposes of Debtors' Chapter 13 Plan, the value of the 2009 Scion xB is \$9,500.00. The parties further agreed that any portion of the claim of the Credit Union in excess of \$9,500 will be treated as a general unsecured claim in Class 7 of the Plan.

Pursuant to the parties' stipulation, the court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and

April 29, 2014 at 2:00 p.m.

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good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Schools Financial Credit Union secured by a 2009 Scion xB, is determined to be a secured claim in the amount of \$9,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$9,500.00 and is encumbered by liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f) (2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 3, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required. That requirement was met.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection to Confirmation of Plan is overruled. No appearance at the April 29, 2014 hearing is required.

Creditor Schools Financial Credit Union opposes confirmation ("Creditor") opposes confirmation of the Debtor's proposed plan. Creditor was the holder of a purchase money security interest in a contract secured by a 2009 Scion at the time of the filing of the bankruptcy petition. The vehicle is listed on Schedule B and the debt is listed on Schedule D, and the debt is provided for in the Chapter 13 Plan.

Creditor argues that the plan violates Federal Rule of Bankruptcy Procedure 1006(b) (3), asserting that it does not provide for the deferral of the payment of the attorney fees until the filing fee is paid in full, and that the Chapter 13 Plan does not comply with 11 U.S.C. § 1325(a) (5). The Chapter 13 Plan provides for the secured claim in Class 2. The claim is listed as PMSI, claim amount of \$13,543.06, value of \$6,960.00, interest rate of 2.99% and monthly dividend of \$202.37. The plan duration is 36 months. Creditor argues that the total amount that should be paid is \$7,285.32.

Creditor contends that pursuant to the hanging paragraph of Section 1325, Creditor is entitled to payment in full of its secured claim. The debt was incurred within 910 days of the filing of the petition. The loan was incurred to purchase a vehicle from CarMax. The total amount to be paid in the plan is less than the claim amount stated in the plan and less than the amount stated on the proof of claim. Additionally, Creditor disagrees with the proposed interest rate of 2.99%, and states that the plan is dependent on a motion to value collateral which is set for hearing on April 29, 2014.

Debtor responds to Creditor's objection with a Declaration, stating amount other things, his assertion that he acquired the vehicle which secures the Creditor's loan as a work vehicle, and claimed the vehicle under the appropriate exemptions of Civil Code of Procedure Sections 703.140(b) (2) and (b) (6). Dckt. No. 43.

SETTLEMENT

On April 24, 2014, Creditor filed a "Notice of Settlement," Dckt. No. 47, stating that the parties have agreed that the following amendments be made to the plan filed on February 24, 2014, and that the same terms be incorporated in the order confirming plan:

1. Effective April 25, 2014 the plan payment shall be \$586.38.
2. The secured claim of Schools Financial Credit Union shall be \$9,500.00 and shall be paid as a class 2 claim, the interest rate shall be 4.75%, and the monthly dividend shall be \$283.69.
3. Any portion of the claim of the Credit Union in excess of \$9,500.00 shall be treated as a general unsecured claim in Class 7.

The objection is overruled, pursuant to the parties' stipulation.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Creditor Schools Financial Creditor Union having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and that Debtor's Chapter 13 Plan filed on February 24, 2014 and the order confirming the proposed plan, incorporate the following amendments pursuant to Creditor and Debtor's Agreement filed on April 24, 2014:

1. Effective April 25, 2014 the plan payment shall be \$586.38.
2. The secured claim of Schools Financial Credit Union shall be \$9,500.00 and shall be paid as a class 2 claim, the interest rate shall be 4.75%, and the monthly dividend shall be \$283.69.
3. Any portion of the claim of the Credit Union in excess of \$9,500.00 shall be treated as a general unsecured claim in Class 7

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 2, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on the Motion to Value Collateral of Schools Credit Union, DMA-1, which is set for hearing on the same date as this motion.

The court is granting the Motion to Value Collateral of Schools Credit Union, DMA-1, pursuant to a settlement reached by Debtor and Creditor. The plan calls for monthly payments of \$265.52 for a plan term of 36 months, which adequately funds the \$9,500.00 that Debtor and Creditor have agreed to regard as the secured value of the Creditor's claim.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled.

26. [11-41271](#)-C-13 ERIK DEVUYST AND VELMA MOTION FOR COMPENSATION BY THE
BLG-3 POLK-DEVUYST LAW OFFICE OF BANKRUPTCY LAW
Chad Johnson GROUP, PC FOR CHAD M. JOHNSON,
DEBTORS' ATTORNEY(S)
4-1-14 [[79](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Application for Additional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Application for Additional Fees is granted. No appearance required.

FEES REQUESTED

Chad M. Johnson, Counsel for the Debtors, makes a Request for the Allowance of Additional Fees and Expenses in this case. The period for which the fees are requested is for the period July 23, 2012 through March 21, 2013.

Description of Services for Which Fees Are Requested

Communication with Clients: Counsel spent 1.3 hours in this category for total fees of \$187.00. Counsel met with client, called client regarding an e-mail from Bank of America, e-mailed client an explanation of the e-mail received from Bank of America, received call from client regarding call with Bank of America, met with client regarding summons, and received call from client regarding judgment.

Case Administration: Counsel spent 0.6 hours in this category for total fees of \$0.00. Counsel reviewed case, reviewed a claim from Chase, and e-mailed and called clients.

Motion to Consent to Enter Loan Modification: Counsel spent 0.9

hours in this category for total fees of \$330.00. Counsel called client regarding a hearing that a creditor filed, prepared for and attended the hearing, and e-mailed client on an order on loan modification.

Motion to Modify (BLG-2): Counsel spent 6.0 hours in this category for total fees of \$1,262.00. Counsel corresponded with client via e-mail and phone, reviewed budget documentation from clients, worked on a budget and plan, prepared and filed motion to modify, reviewed ruling on the motion to modify, and prepared and sent the order to the Trustee.

Motion for Fee and Expenses: Counsel spent 1.5 hours in this category for total fees of \$277.50. Counsel prepared motion for attorney fee and expenses.

DISCUSSION

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the legal services undertaken as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [legal fee] tab without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that Counsel's services performed after confirmation were necessary and beneficial to the success of the Debtors' ability to complete their Chapter 13 plan. It was necessary to file the motions to modify to reflect the changes in the household income and expenses. The post-confirmation work performed was substantial and unanticipated, and the initial agreed-upon fee of \$3,500.00 was not sufficient to fully compensate the attorney for the legal services rendered. The court finds the services were beneficial to the estate and reasonable.

FEES ALLOWED

The hourly rates for the fees billed in this case are \$300.00/hour for counsel for 10.6 hours. Of the 10.6 hours, 9 were billed and 1.6 were no-charge. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$2,056.50 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel for the Trustee also seeks the allowance and recovery of costs and expenses in the amount of \$26.27 for copies (\$9.25) and postage (\$17.02).

The total costs in the amount of \$2,082.77 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel is allowed, and the Trustee is authorized to pay, the

following amounts as compensation as a professional in this case:

Attorneys' Fees	\$2,056.50
Costs and Expenses	\$ 26.27

For a total allowance of \$2,082.77 in Attorneys' Fees and Costs in this case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M. Johnson, Counsel for the Estate
Applicant's Fees Allowed in the amount of \$2,056.50
Applicants Expenses Allowed in the amount of \$26.27,

IT IS FURTHER ORDERED that this is an award of fees pursuant to 11 U.S.C. § 331, which are subject to final review and allowance pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.

Local Rule 9014-1(f) (2) Motion - No Opposition Filed.

Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2014. 39 days' notice has been provided. 21 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 2002(a) (2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny the Motion to Permit Debtor to Sell Property without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This Motion was continued from April 8, 2014 for lack of sufficient notice. Federal Rule of Bankruptcy Procedure 6004 requires that notices of proposed sales, use, or leases of property, other than cash collateral, not in the ordinary course of business be given pursuant to Federal Rule of Bankruptcy Procedure 2002(a) (2), (c) (1), (i), and (k). Debtors provided only 18 days' notice for the initial hearing on this matter. 39 days' notice having passed from the filing and service of the Motion to Sell, the court now proceeds to consider the merits of the Motion.

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Debtors' current plan proposes that Debtors are surrendering their interest in the subject real property and the confirmed Chapter 13 plan provides for U.S. Bank, the holder of a first deed of trust against the subject real property as a Class 3 Creditor.

There is a second deed of trust against Debtors' real property, located at 709-905 Willow Street, Susanville, California, in favor of US Bank, N.A. This junior deed of trust was inadvertently not listed in the original schedules and plan filed with this court. However, U.S. Bank, N.A., holder of both loans has agreed to the short sale of the subject real property, as evidenced by the approval letter filed in support of the Motion as Exhibit C, Dckt. No. 79.

Debtors state that they have received acceptance to short sell the real property from U.S. Bank, N.A. Debtors have entered into a contract to sell the subject real property for a value of \$76,000.00, as evidenced by

the California Residential Purchase Agreement, HUD-1, Statement and Seller's Estimated Closing Statement filed concurrently with this Motion as Exhibit A and B, Dckt. No. 79. Debtors currently owe approximately \$129,283.00 to U.S. Bank, N.A., holder of the first deed of trust against the subject real property and owe approximately \$31,557.00 to U.S. Bank, N.A., holder of the second deed of trust. Debtors have received approval for a short sale of their real property from their Lender, U.S. Bank, N.A., their successors, assigns, and transferee ("Lender"), whereby said Lender has agreed to accept the amount of \$68,021.18 for both its first and second deed of trust. Furthermore, there are additional fees as set forth in the table below;

Distribution of Proceeds	Amount
US Bank, N.A. (holder of 1st DOT)	\$62,021.18
US Bank, N.A. (holder of 2nd DOT)	\$6,000.00
Broker's Commission	\$4,560.00
Settlement or Closing Fees to Cal-Sierra Title Company	\$350.00
Owner's Title Insurance to Cal-Sierra Title Company	\$438.00
Transfer Taxes and Government Recording Fee and Hazard Charges	\$182.60
3% Seller Creditor toward BBC	\$2,280.00
2nd Installments 2013/2014 Property Taxes	\$451.93
Total Amount	\$76,283.71.

Debtors state that they will not receive any funds from the sale, or payment or any monies for fees, commissions, or other reasons relating to the sale. The Chapter 13 Trustee filed a statement of non-opposition to the Motion on March 24, 2014

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to sell property filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Frederick A. Meier, Jr. and Gena R. Meier, the Debtors ("Debtors"), are authorized to sell pursuant to 11 U.S.C. § 363(b) to Michelle M. Teague ("Buyer"), the residential real property commonly known as 709-905 Willow Street, Susanville, California, on the following terms:

1. The Real Property shall be sold to Buyer for \$68,000, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 79.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtors be, and hereby are, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

28. [13-30782](#)-C-13 MICHAEL/PAULA NEHER
PJN-6 Pro Se

MOTION TO CONFIRM PLAN
3-13-14 [[86](#)]

Final Ruling: The case having previously been dismissed, the Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot, the case having already been dismissed.

29. [13-26183](#)-C-13 COLLEEN WHITE
Pro Se

MOTION TO MODIFY PLAN
3-5-14 [[36](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 5, 2014. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. The modified plan is not needed for the administration of the case. Debtor's Motion states the modification is to allow for payment to the Internal Revenue Service of a Priority claim in the amount of \$868.02. Trustee discovered an error in processing the claim of the Internal Revenue Service, Court Claim No. 2. The claim is provided for in the plan confirmed on January 10, 2013, as Class 5, Department of the Treasury, Internal Revenue Service. The Trustee has corrected the error and the claim was paid in full on February 28, 2014.
2. Debtor's Notice and Motion, Dckt. No. 36 and 37, do not include a docket control number. The Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Additionally, the First Amended Chapter 13 Plan itself has not been served on creditors. According to a review of Dckt. No. 35, the plan was served only on the Trustee.

3. Debtor is delinquent \$135.00 under the proposed plan. Debtor has paid a total of \$4,215.00 to the Trustee with the last payment posted March 17, 2014. Debtor is current under the terms of the plan confirmed July 10, 2013.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, the Office of the United States Trustee, the Chapter 13 Trustee, and respondent creditors on April 1, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to grant the Motion to Incur Debt. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors seek permission to incur debt by refinancing their existing home loan through PNC Bank, A Division of PNC Mortgage, NA.

Debtors state that they are seeking to refinance the existing loan on their home. The proposed refinance is a single loan encumbering the Debtors' residence commonly known as 4720 C Parkway, Sacramento, California. Debtors certify that all creditors with liens and security interests encumbering the Debtors' residence will be accounted for in a manner consistent with the existing Chapter 13 plan.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The below chart outlines the proposed terms of the new loan. A copy of Debtors' Uniform Residential Loan Application, containing the relevant terms of the loan, was filed concurrently as Exhibit A in support of this Motion. Dckt. No. 40.

Loan Type	Refinance
Loan Amount	\$171,500.00
Interest Rate	4.750%
Monthly Payment	\$948.45 (\$894.63 principal & interest plus \$53.82 escrow)
Events of Default	5.000% of the overdue payment of principal & interest
Borrowing Limits	N/A
Liens	To be Paid off through escrow
Borrowing Conditions	Refer to Exhibit A

Local Bankruptcy Rule 3015-1(i)(3) sets out the requirements for the court's approval of a refinance of a debtor's existing home loans with more specificity. Local Bankruptcy Rule 3015-1(i)(3) states that:

The Court may approve an *ex parte* motion by the debtor to refinance existing debt(s) encumbering the debtor's residence if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:

(A) All payments required by the chapter 13 plan are current;

(B) The chapter 13 plan is not in default;

(C) A declaration, which may be in the format of Schedules I and J, by the debtor has been filed within the prior thirty (30) days that demonstrates an ability to pay all future plan payments, projected living and business expenses, and the refinanced debt;

(D) The new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence;

(E) The only security for the new debt will be the debtor's existing residence; (F) All creditors with liens and security interests encumbering the debtor's residence will be paid in full from the proceeds of the new debt and in a manner consistent with the chapter 13 plan;

(G) The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the greater of the debtor's current such monthly payment(s) on the existing debt(s) being paid or \$2,000.00.

Here, Debtor has not served and notified all creditors in the case of the hearing on the Motion to Incur Debt. Not all parties in interest and potential respondents having been notified or required to appear in this matter, the court will construe the Motion to be an ex parte Motion that must meet the requirements of Local Bankruptcy Rule 3015-1(i).

Debtor has filed a Motion to Incur Debt, seeking an order from the court approving post-petition debt in the form of a home loan refinance. The joint declaration of Debtors attest to the fact that all creditors with liens and security interests encumbering our residence will be accounted for in a manner consistent with the existing Chapter 13 plan. Dckt. No. 38. The terms of the new home loan lower Debtor's payments from contract installment payments of \$1,387.82 under the confirmed plan to \$948.45.

The Trustee initially filed an objection to the Motion, but withdrew the objection on April 14, 2014, noting that the Declaration of Debtors filed on April 9, 2014, Dckt. No. 43, clarified that the Total Estimated Charge of \$2,719.49 to the Debtors will not be paid by Debtors themselves, but will be added to the loan itself. Trustee states that he has no objection to the Motion to Incur New Debt. Dckt. No. 44. The motion complying with the provisions of Local Bankruptcy Rule 3015-1(I) and Federal Rule of Bankruptcy Procedure 4001(c), the Motion to Incur New Debt is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Incur Debt is granted.

IT IS ORDERED that Debtors are authorized to refinance their home loan with PNC Bank, A Division of PNC Mortgage, NA, which is secured by the real property commonly known as 4720 C Parkway, Sacramento, California, and such other terms as stated in the Uniform Residential Loan Application, filed as Exhibit "A," Docket Entry No. 39, in support of the Motion.

31. 14-21687-C-13 AURA HERNANDEZ
CAH-1 C. Anthony Hughes
Thru #32

MOTION TO VALUE COLLATERAL OF
NATIONSTAR MORTGAGE, LLC
3-20-14 [[20](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 20, 2014. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4210 Archeon Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$100,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$137,053. Nationstar Mortgage, LLC's second deed of trust secures a loan with a balance of approximately \$21,961.46. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Nationstar Mortgage, LLC's secured by a second deed of trust recorded against the real property commonly known as 4210 Archean Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$100,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 2, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the Motion to Value the Secured Claim of Nationstar Mortgage, CAH-1, which is set for hearing on this hearing date. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claims in full.

The court is granting the Motion to Value the Secured Claim of Nationstar Mortgage, CAH-1. The Trustee's singular basis for the Objection to Plan having been resolved, the Objection is overruled. No Motion to Confirm the Plan having been filed, the court cannot confirm the plan at this time.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled.

33. [13-23589](#)-C-13 ANTHONY/ANGELIKA SARGETIS CONTINUED MOTION TO DISMISS
TSB-3 Julie Gustavson CASE
2-21-14 [[83](#)]

No Tentative Ruling: Oral argument will not aid the court in rendering a decision on this matter.

The Motion to Dismiss Case is continued to May 6, 2014, at 2:00 pm, to be heard in conjunction with the Debtors' Motion to Confirm the 6th Amended Plan.

The court will issue a minute order.

34. [13-23589](#)-C-13 ANTHONY/ANGELIKA SARGETIS MOTION TO CONFIRM PLAN
ULC-5 Julie Gustavson 3-17-14 [[89](#)]

No Tentative Ruling: Oral argument will not aid the court in rendering a decision on this matter.

Due to the complexity and volume of the briefing for this matter, the motion is continued to May 6, 2014, at 2:00 pm.

The court will issue a minute order.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 3, 2014. By the court's calculation, 57 days' notice was provided. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes confirmation of the plan. It appears that Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Section 6 of Debtor's Plan filed on January 6, 2014 calls for payments of \$361.50 for 2 months and \$525.50 per month for 58 months. Debtor is delinquent \$164.00. To date, Debtor has paid in \$2,661.00 into the plan. The next scheduled payment of \$525.50 is due on February 25, 2014.

Additionally, Trustee raises several issues regarding the claim of the Internal Revenue Service, which are detailed below.

1. No Motion to Value: Debtor proposes to pay the claim of the Internal Revenue Service, but has not filed a motion to value collateral and set it for hearing. The Internal Revenue Service filed a claim on November 8, 2013. Claim No. 2. The secured portion of the claim is \$101,400.00. The Plan does not pay in sufficient funds to pay the entire claim in full.
2. Objection to Claim: Section 6.01 of the plan states in part that the Debtor has objected to the claim of the IRS and filed an adversary complaint. Debtor's Objection to the claim of the Internal Revenue Service was withdrawn on March 3, 2014 (Dckt. No. 63).
3. Disbursements: Section 6.01 of the plan, and the Stipulation to Confirm Second Amended Plan (filed on March 27, 2014, Dckt. No. 68) both state in part that the Debtor proposes to pay a portion of the priority claims of the Franchise Tax Board and Internal Revenue

Service (and the Service's secured claim) that is not in dispute. Section 6.01 and the stipulation do not list the amount that Trustee should disburse until the dispute is resolved, if at all. It appears that the Debtor cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6).

Moreover, the administrative expenses section of Debtor's Plan is unclear. Section 2.06 calls for \$2,250.00 in fees to be paid through the plan. However, Section 2.07 of the plan indicates \$0.00 each month will be paid towards the administrative expense. Trustee is unable to disburse any attorney fees without the information in Section 2.07.

SERVICE OF PROCESS ISSUES

Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1 Notice Requirements

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:

United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:

United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

- (1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044
- (2) United States Attorney as specified in LBR 2002-1(a)
above; and,
- (3) Internal Revenue Service at the addresses specified on
the roster of governmental agencies maintained by the
Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

Internal Revenue Service
Centralized Insolvency
Operation
PO Box 7346
Philadelphia, PA 19101-7346

A motion is a contested matter. See Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

Additionally, service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Based on the Trustee's concerns regarding Debtor's delinquency and the unclear treatment of the Internal Revenue Service claim, the amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 18, 2014. By the court's calculation, 44 days' notice was provided. 42 days' notice is required.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted. No appearance required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The Chapter 13 Trustee filed a statement of non-opposition to the proposed plan on March 27, 2014. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 18, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 2, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Plan relies on the Motion to Value the Secured Claim of Wells Fargo Bank, PLC-1, which was set for hearing on April 22, 2014. The court having granted the Motion to Value the Secured Claim of Wells Fargo, PLC-1, on that date, the Trustee's objection is overruled. No Motion to Confirm the Amended Plan has yet been filed or served, with accompanying evidence from the Debtor certifying that the terms of the plan are true and correct. The plan cannot be confirmed at this time.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Confirmation the Plan is overruled.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on March 26, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to sustain the Objection to Debtor's Claim of Exemptions. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor has claimed exemptions under California Code of Civil Procedure §703.140, and appears to be married based on Debtor's Schedule I, (Dckt. No. 13, Page 14), although the spouse has not joined in the petition. Debtor's spouse has not joined in the petition. California Code of Civil Procedure §703.140(a)(2) requires Debtors to file a spousal waiver, signed by Debtor and Debtor's spouse, for the use of claimed exemptions.

California Code of Civil Procedure § 703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

The Trustee has had not found any such waiver failed with the court after reviewing the docket.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Debtor's Claim of Exemptions filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained and Debtor is denied the \$60 claimed in exemption in cash on hand pursuant to Cal. Code Civ. P. § 703.140(b)(5); \$120.00 exemption claimed in checkings, savings under Cal. Code Civ. P. § 703.140(b)(5); \$800 in household goods and furnishings under Cal. Code Civ. P. § 703.140(b)(3); \$350 exemption claimed in books, pictures under Cal. Code Civ. P. § 703.140(b)(3); \$420.00 in furs and jewelry under Cal. Code Civ. P. § 703.140(b)(5);; \$1,100.00 exemption in wearing apparel claimed pursuant to Cal. Code Civ. P. § 703.140(b)(3); and \$14,300.00 exemption claimed in a 2008 Toyota Sienna 2008 Scion and 2005 Toyota Camry under Cal. Code Civ. P. § 703.140(b)(3).